

February 2, 2016

Committee on Inland Fisheries and Wildlife
100 State House Station
Augusta, ME 04333-0100

Senator Paul Davis, Chair
Representative Robert Duchesne, Chair
Members of the Joint Standing Committee on Inland Fisheries and Wildlife

Subject: LD 640 A report back to the Committee regarding conservation measures for bats listed under the Maine Endangered Species Act relating to timber harvesting and forest management practices.

Good afternoon Senator Davis, Representative Duchesne and honorable members of the Inland Fisheries and Wildlife Committee, my name is James Connolly and I am the Director of the Bureau of Resource Management for the Department. I am here to update you on the progress made relating to conservation measures for bats listed as threatened or endangered and how the timber harvest and forest management practices will be impacted.

After our report to this committee on January 12, 2016 the Department drafted proposed rules under the protection guideline provisions of MESA. We shared the proposed rules with representatives from Maine Forest Products Council, Maine Professional Loggers, The Nature Conservancy, Small Woodlot Owners of Maine, Maine Audubon, and the renewable energy and construction industries. The group engaged in a broad discussion about the existing statutes governing endangered species and potential needs to address the issue of forestry and bats. Currently the Department has the authority to issue individual incidental take permits (ITP's) for people or organizations when there are known impacts in discrete areas; the Department will continue to issue individual ITP's. The Department has been conservative in issuing ITP's to date and have only issued ITP's for projects with significant risks to a species and not necessarily to conceptual risks.

After review of our proposed rule-making options, it was determined that current statutory authority does not allow the Department to adequately protect the listed species and provide reasonable assurances to the potentially effected stakeholders impacted through recent bat listings without statutory changes. After several stakeholder meetings and consultations with the attorney general's office we believe there are two changes in statute that are needed to give the Department the authority to exempt or authorize particular activities.

The first change would authorize the Department to issue a broad activity ITP when there is a potential take of a listed species but there is not an identifiable person or specific location to permit as outlined under the current ITPs authorized in Title 12. This potential take must be determined to not impact the conservation of the listed species. Authorizing the Department to issue a Broad Activity Incidental Take Permit which is then implemented through the current ITP process would provide coverage for a group of people who are otherwise participating in a lawful activity. This would be a very similar process to the issuance of the Barrow's Goldeneye ITP which affords protection to licensed waterfowl hunters. The benefit of this process for a

broad activity is that we can assess the activity, implement modifications, and provide assurances and cover activities where we anticipate little to no take. We would consider this option for homeowners in Maine that have bats in an occupied dwelling. The Department would be required to conduct public hearings on any proposed broad activity ITP to solicit public input and to communicate with the public at large.

We would also recommend authorizing the Department to issue a General exception for potentially widespread species which would be implemented through the rulemaking process, and cover activities that we expect will have no demonstrable impact to the species recovery. This is a very specific application for low risk, but otherwise lawful activities for endangered or threatened species that are potentially widespread on the landscape and best available science indicates there is little risk from the activity to the conservation of the species. This rule would be updated if the science, information or technology changes and warrants a review of the status. This would be a Maine specific version of the federal 4D rule.

We are also recommending a general exception for all silvicultural activities in Maine. The Department recognizes that based on the limited information available there is no documented mortality of northern long-eared bats in Maine due to the operation of wind turbines and is prepared to afford protection to wind projects for northern long-eared bats and a general exemption for the operation of wind turbines for northern long-eared bats based on best science currently available. To date, previous methods used to monitor bats at Maine wind projects did not distinguish between myotis species. As technology improves the Department will consult with the wind industry to include monitoring methods that will enable the identification of bats to the species level and better guide developing technology to safeguard bats from the operation of wind turbines. This exception may be modified as additional information is acquired. The Department will work with the wind industry to develop individual ITPs for the little brown and eastern small-footed bats.

In summary, MDIFW recognizes the concerns of stakeholders following the recent listing of three bat species as Endangered or Threatened under Maine ESA. A sudden change in status of these bats in combination with their secretive habits complicates some conservation strategies. This is a unique situation in the 40-year history of the Maine Endangered Species Act. There is the ability through the addition of a 4D-like exception and ITPs for broad-based activities to implement appropriate conservation measures and continue to protect species under MESA while providing a predictable and responsible regulation. Based on our meetings to date the Department feels there is agreement on the conservation measures proposed to protect bats and the only remaining issue is to create the vehicle to put these into place.